IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 2040 of 1995

Between:

Dandu Balaiah S/o.Sri Kishtaiah
R/o.Madhapuram(V), Turkapalli (M),Nalgonda Dist.

..... PETITIONER

AND

1 The Commissioner of Land Revenue, Hyderabad.
2 The Joint Collector, Nalgonda
3 The Sub-Collector, Bhongir.
4 The Mandal Revenue Officer,
Turkapalli (M), Nalgonda Dist.
5 Barma Bhikshapathi, S/o.Chandraiah
R/o.Madhapuram (V), Turkapalli (M),
Nalgonda Dist.
6 Barma Laxmaiah, S/o.Chandraiah,
R/o.Madhapuram (V), Turkapalli (M),
Nalgonda Dist.

..RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the orders of the Tahsildar, Bhongir in Case.No.D/625/83 dated 22-3-1983 as confirmed by a orders in Case No.9/87 dated 20-7-88 on the file of the respondent No.3; Case No.C3/JC/JC/Land Encroachment/10/88 dated 22-7-91 on the file of the 2nd respondent and CLR's Ref.BCW.6/946/92 dated 7-12-1994 on the file of the respondent No.1 as bad, illegal and void and set-aside the same.

Counsel for the Petitioner: MR.H.VENUGOPAL, Advocate

Counsel for Respondent Nos.1 to 4 : G.P. for Revenue

Counsel for the Respondent Nos.5 and 6: MR.M.RAJAMALLA REDDY

The Court made the following :

O R D E R :

The petitioner is an agriculturist of Madhapur village Turkapalli Mandal, Nalgonda District. He claims that he has been cultivating the land admeasuring 0.24 gts. comprised in Survey No.500 of the said village and also alleges that he is paying the Sivai Jamabandi assessed by the Revenue authorities. He applied to fourth respondent for assignment of the said land. However, fourth respondent appears to have issued a notice dated 22-3-1983 alleging that the petitioner's family owns an extent of Acs.7-00 of land and, therefore, he is not eligible for Sivai Jamadar rights for the sanction of patta. The petitioner, thereafter, gave a representation on 5-4-1983. According to the petitioner, the land belongs to his grand father and after his death the property was inherited by the three daughters including the mother of the petitioner, in which event, each of them would get an extent of Ac.1-30 gts. Therefore, contended that he cannot be treated as ineligible for Sivai Jamadar patta.

Fourth respondent passed orders on 21-6-1983 seeking eviction of the petitioner under the provisions of Andhra Pradesh Land Encroachment Act,1905 (for brevity 'the Act') and also proposing the names of respondents 5 and 6 for assignment of pattas in their favour. Assailing the same, the present writ petition is filed.

This Court, while admitting the writ petition on 8-2-1995, refused to grant any stay of eviction. Respondents 1 to 4 have filed a counter affidavit opposing the writ petition. It is stated that the petitioner is an encroacher. Fourth respondent conducted an enquiry and passed orders for eviction of the petitioner under the provisions of the Act. Aggrieved by the same, the petitioner filed an appeal before the Sub-Collector, which was rejected. Again the petitioner invoked the jurisdiction under Section 10 of the Act and filed a revision before the Joint Collector, which was also dismissed on 22-7-1991. The petitioner yet again preferred Second Appeal before the Commissioner of Land Revenue, which was also dismissed on 7-12-1994.

The learned counsel for the petitioner relies on the decision of this Court in **Boddela Sambamurthy v The Tahsildar** in support of the contention that the status of a person whether he is a landless poor person or not has to be decided on the basis of the notional partition. I am afraid, the said decision has no application to the facts of this case. In the said case, in contravention of the provisions of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act,1977, land was purchased from assignee. The Tahsildar declared the sale void and ordered for resumption of the land. In the writ petition filed before this Court, it was contended that the sale of the assigned land in favour of landless poor person is not prohibited and that he is a landless poor person if the notional partition is taken into consideration. As a fact, it

was found by this Court that the petitioner had only undivided interest in the property and that even after partition the petitioner's status as landless poor person would not have changed, as the petitioner had two minor sons. In the present case on hand, except stating that the petitioner's grand father had three daughters, who would get Ac.1-30 gts., no material is placed before this Court, as to when the grand father died? It is not revealed when there was a partition among his three daughters and when the petitioner's mother died, in the event of which, the petitioner would have got only Ac.1-30 gts. Further, all the authorities found that the petitioner is not entitled for Sivai jamadar rights. That being the question of fact, I am not inclined to interfere in the matter.

The writ petition is devoid of merits and accordingly dismissed. No costs.

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(V.V.S.RAO, J.)

Dt.14-07-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner of Land Revenue, Hyderabad.
2 The Joint Collector, Nalgonda
3 The Sub-Collector, Bhongir.
4 The Mandal Revenue Officer,
Turkapalli (M), Nalgonda Dist.
5. 2CCs to Government Pleader for Revenue, High Court of A.P.,

Hyderabad.(OUT)

6. 2CD copies

HON’BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.2040 of 1995

Dt.14-07-2004.

(Msr)